

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TRACY WARCHOLAK,

Plaintiff,

v.

ORDER  
06-CV-023A

JO ANNE B. BARNHART  
Commissioner of Social Security,

Defendant.

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The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On July 23, 2007, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that defendant's motion for judgment on the pleadings be denied and that plaintiff's cross-motion for judgment on the pleadings be granted in part.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant's motion for judgment on the pleadings is denied and plaintiff's cross motion is granted in part to the extent that it seeks to vacate the Commissioner's determination. The case is remanded to the Commissioner for further proceedings.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: August 10, 2007